STATE OF MICHIGAN

COURT OF APPEALS

ROBERT INMAN,

Plaintiff-Appellant,

v

BRAD GAREAU,

Defendant-Appellee.

UNPUBLISHED
October 16, 2001

No. 220999
Genesee Circuit Court
LC No. 96-051974-NI

Before: Hoekstra, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the judgment of no cause of action in favor of defendant in this auto negligence lawsuit. We affirm.

Plaintiff first argues that the trial court erred in denying his request to present a rebuttal witness. A decision regarding the admission of rebuttal evidence is reviewed for an abuse of discretion. *Winiemko v Valenti*, 203 Mich App 411, 418; 513 NW2d 181 (1994). "The purpose of rebuttal evidence is to undercut an opponent's case, and a party may not introduce evidence competent as part of his case in chief during rebuttal unless permitted to do so by the court." *Id.* at 418-419.

During the case in chief, plaintiff testified that the damage to his vehicle from the auto accident included a broken taillight, a broken taillight casing, a caved-in trunk door, and a pushed-in bumper. Plaintiff further testified that he received an estimate for the repairs in the amount of $750. According to defendant's testimony, plaintiff's taillight and taillight casing were broken. When defendant was asked about the discrepancy in the damages to the car, he said that he did not remember seeing damage to the hatchback or the bumper of the car and that he only remembered the damage to the taillight. Thereafter, plaintiff sought to present a person from the auto body shop as a rebuttal witness to testify in support of plaintiff's testimony as to the actual damage to the vehicle. The trial court denied plaintiff's request.

In order for this Court to find error in the trial court's ruling that plaintiff could not call as a rebuttal witness a person from the auto body shop, it must determine that a substantial right of the party was affected. MRE 103(a). Here, the auto body shop worker's testimony would have been cumulative to plaintiff's testimony, and testimony regarding the difference in the level of damage to the car was not significant. Plaintiff did not testify that his car was totaled, while

defendant testified that the car had a slight scratch. Further, the issue in this case is plaintiff's alleged injury, which is only collaterally related to the damage to his car, especially where the parties' testimony to damage was not significantly different. See *People v Humphreys*, 221 Mich App 443, 446; 561 NW2d 868 (1997) (Rebuttal evidence must relate to a substantive matter, not a collateral matter.). Defendant did not contest the amount of the estimate, he only testified that he remembered less damage than plaintiff testified to. Under these circumstances, we conclude that the trial court did not abuse its discretion in denying plaintiff's request to present that rebuttal witness.

Next, plaintiff argues that the trial court erred in denying his motion for a directed verdict. We review a denial of a motion for directed verdict de novo. *Chiles v Machine Shop, Inc,* 238 Mich App 462, 469; 606 NW2d 398 (1999). This Court must view the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Id.* "If reasonable jurors could have reached different conclusions, we will not substitute our judgment for that of the jury." *Clark v K-Mart Corp*, 242 Mich App 137, 140; 617 NW2d 729 (2000).

In order to establish defendant's liability, plaintiff must prove that defendant's conduct was the cause in fact and the legal cause of his injuries. *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000). Here, plaintiff testified that the auto accident caused his injuries and plaintiff's doctor concurred. However, defendant presented testimony from a different doctor who stated that he was not sure of the cause of plaintiff's injuries, that part of his injuries could be the result of a pre-existing arthritic condition, and that plaintiff's torticollis could be psychosomatic. Viewing this evidence in a light most favorable to defendant, we conclude that reasonable jurors could disagree whether the auto accident caused plaintiff's medical problems. Thus, the trial court did not err in denying plaintiff's motion for a directed verdict.

Plaintiff next argues that the trial court confused the jury when giving instructions that were inconsistent with the jury verdict form. A party must object to jury instructions on the record before the jury retires to deliberate stating specifically the matter to which the party objects and the grounds upon which it objects. MCR 2.516(C). If a party fails to do so, it has waived appellate review. *Leavitt v Monaco Coach Corp,* 241 Mich App 288, 300; 616 NW2d 175 (2000). Plaintiff did not object to the instructions and therefore he has waived appellate review. *Id.*

Finally, plaintiff argues that he is entitled to a new trial because his counsel was ineffective in failing to call the rebuttal witness that the trial court approved and in failing to object to the jury instructions. However, the cases that plaintiff cites in support of this argument are not relevant. "This Court will not search for authority either to sustain or reject a party's position." *Schellenberg v Rochester Michigan Lodge No 2225, of Benev & Protective Order of Elks of USA*, 228 Mich App 20, 49; 577 NW2d 163 (1998). Plaintiff is entitled to no relief.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Brian K. Zahra